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Supreme Court, U.S.
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No. 95-1012

IN THE

Supreme Court of the United States

OCTOBER TERM, 1995

JOE L. CALDWELL,

Petitioner,

v.

THE AMERICAN BASKETBALL ASSOCIATION, INC.; THE SPIRITS OF ST. LOUIS BASKETBALL CLUB, a limited partnership; OZZIE SILNA; DANIEL SILNA; HARRY WELTMAN; DONALD SCHUPAK; and TEDD MUNCHAK,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENTS DON L. CHAPMAN AND DIANE MUNCHAK WILSON, AS EXECUTORS OF THE ESTATE OF TEDD MUNCHAK

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January 23, 1996

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PRELIMINARY STATEMENT

Respondents Don L. Chapman and Diane Munchak Wilson, executors of the Estate of Tedd Munchak[1] ("Munchak"), submit this brief in opposition to call to the Court's attention

[1] Tedd Munchak, a defendant below, died on September 30, 1995. A motion to substitute his estate is appended hereto.

certain findings of the District Court that relate specifically to Munchak and which present an independent ground for sustaining the judgment below. In all other respects, Munchak adopts the points and authorities contained in the Brief for Certain Respondents in Opposition dated January 5, 1996.

STATEMENT OF THE CASE

The case against Munchak is factually straightforward. No facts were offered below to raise a dispute as to the events that form the basis of Petitioner's claim against Munchak.[2]

The Events of 1974 and 1975

Munchak was part owner of the Carolina Cougars, a professional basketball team that was a member of the American Basketball Association, Inc. ("ABA"). On or about July 25, 1974, the Spirits of St. Louis, a limited partnership, acquired Munchak's entire interest in the Cougars. Upon the sale, the club moved from North Carolina to St. Louis, Missouri and changed its name to the Spirits of St. Louis. See 825 F. Supp. 561-62, Pet. 21a-22a.

After Munchak sold his holding in the Cougars, he retained no financial interest in the team and was no longer involved in its (or the Spirits') management. At about this time, Munchak agreed to become Commissioner of the ABA. He initially told the member clubs he would agree to serve only for 60 days, but his tenure lasted for about one year. He received a yearly salary of $1. 825 F. Supp. 562, Pet. 22a.

On December 3, 1974, the Spirits suspended Caldwell. Munchak did not participate in this decision. It was made by the Spirits' management alone. Everyone with any personal knowledge of the circumstances of Caldwell's suspension attests that Munchak was not involved in it. 825 F. Supp. 573, Pet. 48a.

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[2] The relevant facts and procedural history of this case are set forth in the opinion of District Judge Leonard B. Sand, 825 F. Supp. 558, 560-64, 566-74, Pet. 16a, 18a-27a, 32a-48a.

Caldwell promptly appealed his suspension to the Office of the Commissioner. Prentiss Q. Yancey ("Yancey") was the General Counsel of the ABA Players' Association. On December 6, Yancey sent Munchak a letter requesting a prompt investigation and hearing regarding the propriety of the suspension. On December 10, Michael H. Goldberg, General Counsel of the ABA, wrote to Yancey that he and Munchak agreed the matter was serious and it would be treated expeditiously.

Within this time period, Munchak made it clear to Yancey that he would recuse himself as an arbitrator because he personally guaranteed Caldwell's basketball contract.[3] He also told representatives of the Spirits of St. Louis that an indefinite suspension of Caldwell would not be tolerated. 825 F. Supp. 563, Pet. 24a.

About two weeks later, some time before December 23, Caldwell changed strategies. He decided he no longer wanted to pursue his remedies before the ABA, instead determined to litigate the suspension issue in court, and thus commenced this lawsuit and the Georgia Action. 825 F. Supp. 563, Pet. 24a.

There is No Evidence that Munchak Was Involved in Any Alleged Antitrust Conspiracy

As the District Court below determined, Caldwell has offered no evidentiary facts against Munchak. Indeed, no specific conduct is attributed to Munchak. 825 F. Supp. 573, Pet. 47a.

Stripped of its rhetoric, Caldwell's entire case against Munchak is grounded on his claim that Munchak did not warn Caldwell of the suspension and did not stop it. But Caldwell never produced a shred of evidence that shows that these two alleged omissions were in furtherance of a conspiracy. As the

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[3] The guarantee became the subject of *Caldwell v. Munchak*, 548 F. Supp. 755 (N.D. Ga. 1982) (the "Georgia Action").

District Court found, there is no evidence of any conspiracy or approval of a conspiracy by Munchak. Munchak tried to address the Caldwell/Spirits of St. Louis dispute on an expeditious basis through an ABA proceeding with an impartial arbitrator, but *Caldwell* chose to file his federal lawsuits in Georgia and New York and not to pursue his claim through arbitration. These facts are uncontradicted. 825 F. Supp. 573, Pet. 47a-48a.

Finally, the District Court observed that even Caldwell's economic motive argument does not hold water. Caldwell argued that Munchak wanted to limit his exposure as a guarantor of the pension provisions in Caldwell's contract. The District Court pointed out, however, that if this were the case, Munchak would not have waited to the final year of the contract to take steps to have Caldwell terminated. Munchak's purported economic incentive would have called for an earlier attempt to have Caldwell discharged thereby minimizing Munchak's potential exposure under the guaranty. 825 F. Supp. 574, Pet. 48a.

With a record bereft of *any* facts to tie Munchak to a conspiracy to violate the antitrust laws, the District Court ruled that "even if this Court had found that genuine issues of fact existed as to whether the other defendants had engaged in a concerted refusal to deal with Caldwell, summary judgment would still have been appropriate in favor of Munchak because Caldwell had presented *no* evidence that he participated in such a boycott." 825 F. Supp. 574, Pet. 48a. (Emphasis in original)

REASONS FOR DENYING THE WRIT

In addition to the reasons to deny the writ as set forth in the January 5 Brief Submitted on Behalf of Certain Respondents in Opposition, the question raised in the petition particularly as to Munchak, is not presented by the record of this case. Thus, the District Court held that the record is devoid of any evidence that Munchak participated in or approved of a conspiracy in restraint of trade. The District Court's holding specifically as to Munchak was not disturbed by the Second

Circuit's decision. Nor does the petitioner argue here that the District Court erred in holding that the record is devoid of any facts to support Munchak's participation in activities violative of the anti-trust laws, or that the legal standard the District Court applied in granting summary judgment as to Munchak was wrong. Accordingly, the lack of any record evidence that implicates Munchak in a conspiracy is an independent ground for sustaining the judgment below.

CONCLUSION

For the reasons stated above and stated in the January 5, 1996 Brief for Certain Respondents in Opposition, the Court should deny the petition for a writ of certiorari.

Dated: New York, New York
January 23, 1996

Respectfully submitted,

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